

**Senate Bill No. 1494**

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Passed the Senate     March 30, 2004

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*Secretary of the Senate*

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Passed the Assembly     July 1, 2004

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to amend Sections 11362.7 and 11362.77 of the Health and Safety Code, relating to medical marijuana.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1494, Vasconcellos. Medical marijuana.

The Compassionate Use Act of 1996 provides that a patient or a patient's primary caregiver who possesses or cultivates marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician is not subject to conviction for offenses relating to possession and cultivation of marijuana.

Existing law requires the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to patients qualified to use marijuana for their personal medical purposes, and to their primary caregivers, if any. Existing law establishes limits on the amount of marijuana that a qualified patient or primary caregiver may possess, unless a doctor recommends that those amounts do not meet the patient's needs. Existing law provides that counties and cities may retain or enact medical marijuana guidelines allowing persons with an identification card to exceed these limits.

This bill would recast these provisions relating to the amount of marijuana that may be possessed for personal medical purposes. The bill, instead, would provide that a qualified patient, person with an identification card, or any designated primary caregiver may possess any amount of marijuana consistent with the medical needs of that qualified patient or person with an identification card. The bill would provide that a person with an identification card or a designated primary caregiver with an identification card is not subject to arrest for possessing or maintaining certain amounts of marijuana. The bill would provide that this provision is not intended to affect any city or county guidelines to the extent that the amounts contained in those guidelines exceed the quantities set forth in the bill.

Existing law, for purposes of the voluntary identification card program, defines a primary caregiver as an individual who has been designated as a primary caregiver by more than one qualified



patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver. Existing law provides that an individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver may be a designated primary caregiver under these provisions if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

This bill would redefine a primary caregiver to include an individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same county as the primary caregiver or resides 25 miles or less from the primary caregiver. It would provide that an individual may also be designated as a primary caregiver by a qualified patient or person with an identification card who resides in a county other than that of the primary caregiver or resides more than 25 miles from the primary caregiver only if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

*The people of the State of California do enact as follows:*

SECTION 1. Section 11362.7 of the Health and Safety Code is amended to read:

11362.7. For purposes of this article, the following definitions shall apply:

(a) “Attending physician” means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.



(b) “Department” means the State Department of Health Services.

(c) “Person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) “Primary caregiver” means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same county as the primary caregiver or resides 25 miles or less from the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a county other than that of the primary caregiver or resides more than 25 miles from the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.



(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) “Qualified patient” means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) “Identification card” means a document issued by the State Department of Health Services that identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

(h) “Serious medical condition” means all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Anorexia.
- (3) Arthritis.
- (4) Cachexia.
- (5) Cancer.
- (6) Chronic pain.
- (7) Glaucoma.
- (8) Migraine.
- (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
- (10) Seizures, including, but not limited to, seizures associated with epilepsy.
- (11) Severe nausea.
- (12) Any other chronic or persistent medical symptom that does either of the following:
  - (A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
  - (B) If not alleviated, may cause serious harm to the patient’s safety or physical or mental health.

(i) “Written documentation” means accurate reproductions of those portions of a patient’s medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the



county's designee as part of an application for an identification card.

SEC. 2. Section 11362.77 of the Health and Safety Code is amended to read:

11362.77. (a) A qualified patient, a person with an identification card, or any designated primary caregiver may possess any amount of marijuana consistent with the medical needs of that qualified patient or person with an identification card.

(b) (1) A person with an identification card or a primary caregiver with an identification card shall not be subject to arrest for possessing eight ounces or less of dried marijuana per person with an identification card, and maintaining six or fewer mature or 12 or fewer immature marijuana plants per person with an identification card.

(2) Nothing in this section is intended to affect any city or county guidelines to the extent that the amounts contained in those guidelines exceed the quantities set forth in paragraph (1).

(c) If a physician determines that the quantities specified in subdivision (b) do not meet the medical needs of the person with an identification card, that person or that person's primary caregiver with an identification card may possess an amount of marijuana consistent with those medical needs and shall not be subject to arrest for possessing that amount.

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.



Approved \_\_\_\_\_, 2004

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*Governor*

